Jurisdictional Statement

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SUPREME COURT, U.S.

NO. 81-5709

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

MELODY WITTNER,

Appellant,

vs.

CASS COUNTY WELFARE DEPARTMENT
AND
COMMISSIONER OF PUBLIC WELFARE,

Appellees.

An Appeal From The
Supreme Court of Minnesota

JURISDICTIONAL STATEMENT

THOMAS M. PLACE
150 South College St.
Carlisle, Pennsylvania 17013
(717) 243-4611, Ext. 240

DAVID J. RASMUSSEN
Anishinabe Legal Services
Box 157
Cass Lake, Minnesota 56633
(218) 335-2223

Attorneys for Appellant

QUESTION PRESENTED BY THIS APPEAL

Does a state statute which grants a local welfare agency the right to seek judicial review of a "fair hearing" decision of the State agency charged with administering the Aid to Families with Dependent Children ("AFDC") program violate Section 402(a)(3) of the Social Security Act and regulations promulgated thereunder requiring the establishment of a single State agency to administer the State's AFDC plan?

TABLE OF CONTENTS

	Page
INTRODUCTION	1
OPINIONS BELOW	2
JURISDICTION	2
STATUTORY PROVISIONS AND REGULATIONS	2-3
STATEMENT OF THE CASE	3-5
THE QUESTION IS SUBSTANTIAL	5-14
Introduction	5-6
1. The Minnesota Statute Conflicts with Congress' Intent that States Administer their AFDC Program in such a Manner that Final Authority Rests in a Single State Agency.	6-12
2. Minnesota's Interpretation of the "single State agency" Requirement Directly Conflicts with Decisions of the Highest Courts of New Jersey and New York.	12-13
3. Granting Local Agencies Appeal Rights Creates the Potential for Disparate Treatment of Applicants and Recipients of AFDC.	13
4. Minnesota Statute Burdens Applicants and Recipients of AFDC in a Manner not Intended by Congress.	13-14
CONCLUSION	15
APPENDIX A - The Opinion of the Minnesota Supreme Court	1A-9A
APPENDIX B - The Opinion of the Cass County District Court	10A-16A
APPENDIX C - Notice of Appeal	17A-18A
APPENDIX D - Minnesota Statute Annotated § 256.045 subd. 7	19A
APPENDIX E - Letter from Acting Assistant Regional Commissioner Florence Aitchison, March 1, 1978	20A-22A
APPENDIX F - Letter from Associate Commissioner Barry L. Van Lare, September 24, 1979	23A-25A

TABLE OF AUTHORITIES CITED

Cases:	Page
Almira v. Dumpson, 401 N.Y.S.2d 367 (1977)	13
Beaudoin v. Toia, 408 N.Y.S.2d 417 (1978)	11,12,13
Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94 (1973)	10
Essex County Welfare Board v. Dept. of Institutions & Agencies, 381 A.2d 349 (1978), cert. denied, 437 U.S. 910 (1978)	
In re Ferry v. Boniface, 350 N.Y.S.2d 228 (1973)	13
Investment Co. Institute v. Camp, 401 U.S. 617, (1971)	10
King v. Smith, 392 U.S. 309 (1968)	8
New York Dept. of Social Services v. Dublino, 413 U.S. 405 (1973)	10
Reed v. New York State Dept. of Social Services, 354 N.Y.S.2d 389 (1974)	13
Smythe v. Lavine, 351 N.Y.S.2d 568 (1974)	13
Youakim v. Miller, 425 U.S. 232 (1976)	10

Statutes:	
28 U.S.C. § 1257(2)	2
42 U.S.C. § 601	6
42 U.S.C. § 602(a)(3)	1,2,4,5,6,7,8, 9,10,11
42 U.S.C. § 602(a)(4)	2,7,8
Minnesota Statute Annotated § 256.01 subd. 1	7
Minnesota Statute Annotated § 256.01 subd. 4(1)	7
Minnesota Statute Annotated § 256.01 subd. 4(2)	7
Minnesota Statute Annotated § 256.045 subd. 1	7
Minnesota Statute Annotated § 256.045 subd. 6	7
Minnesota Statute Annotated § 256.045 subd. 7	3,4,8,14
N.Y. Social Service Law § 22(9)(b)(McKinney)	7

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An Appeal From The
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JURISDICTIONAL STATEMENT

INTRODUCTION

Appellant appeals from the final decision of the Minnesota Supreme Court holding that MINN. STAT. ANN. § 256.045 subd. 7 granting local welfare agencies the right to seek judicial review of "fair hearing" decisions made by the Department of Public Welfare does not conflict with Section 402(a)(3) of the Social Security Act, 42 U.S.C. § 602(a)(3) and regulations promulgated thereunder requiring states to administer the AFDC program through a "single State agency" with state-wide authority.

OPINIONS BELOW

The opinion of the Minnesota Supreme Court is reported at 309 N.W.2d 320 (Minn. 1981). App. A, pp. 1A-9A. The Cass County District Court decision is unreported. App. B, pp. 10A-16A.

JURISDICTION

The decision of the Minnesota Supreme Court was filed on August 21, 1981. Notice of appeal to this Court was filed in the Supreme Court of Minnesota on October 1, 1981. App. C, p. 17A. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(2).

STATUTORY PROVISIONS AND REGULATIONS

Sections 402(a)(3) and (4) of the Social Security Act, 42 U.S.C. § 602(a)(3) and (4), require that, to be eligible for federal financial assistance, state AFDC programs must:

> (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;
>
> (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or not acted upon with reasonable promptness;

Section 45 C.F.R. § 205.100(b)(3) implementing Section 402(a)(3) of the Act provides:

> (3) In the event that any services are performed for the single State agency by other State or local agencies or offices, such agencies and offices must not have authority to review, change, or disapprove any administrative decision of the single State agency, or otherwise substitute their judgment for that of the agency as to the application of policies, rules and regulations promulgated by the State agency.

Minnesota Statute Annotated § 256.045 subd. 7 (1980) provides in part:

> Judicial Review, An applicant or recipient or local agency aggrieved by an order of the Commissioner of welfare may appeal the order to the District Court of the County responsible for furnishing assistance. . . .
> (emphasis supplied)

The full text of § 256.045 subd. 7 is attached hereto as Appendix D, p. 19A.

STATEMENT OF THE CASE

Appellant Melody Wittner has received AFDC benefits since 1975. In February 1979, the Cass County Department of Social Services ("local agency") notified appellant that she was required to cooperate with the agency in establishing paternity and support from the father of her four-year-old son unless she had good cause for not doing so. Based on the father's violent conduct when he was informed of the pregnancy, appellant filed a good cause claim with the agency pursuant to 45 C.F.R. § 232.40.

Following denial of her good cause claim by the local agency for failure to identify the putative father, appellant requested a fair hearing before an Appeals Referee of the Department of Public Welfare, the State agency that supervises the AFDC program for the State of Minnesota. The administrative hearing was held on August 23, 1979. The Referee's initial decision of September 4, 1979 affirming the denial of appellant's good cause claim was erroneously based on regulations which had been withdrawn. Thereafter, on September 18, 1979, the Referee issued an amended order, adopted by the Commissioner of the

Department of Public Welfare, sustaining appellant's good cause claim.

On October 5, 1979, the appellee local agency filed a notice of appeal pursuant to Minnesota Statute § 256.045 subd. 7 in the Cass County District Court challenging the decision of the Appeals Referee. Appellant moved to dismiss the appeal specifically arguing that Section 402(a)(3) of the Social Security Act, 42 U.S.C. § 602(a)(3) and regulations promulgated thereunder prohibit local agencies from challenging the final administrative decision of the supervising State agency. Appellant's motion was denied by the District Court on February 26, 1980 without prejudice in order to allow the matter to be heard by a three-judge District Court panel. On May 12, 1980, the three-judge panel of the District Court denied appellant's motion to dismiss concluding that there was no conflict between the Minnesota statute permitting a local agency to appeal a hearing decision of the State agency and federal law. The Court stated that "federal regulations do not prohibit" local agencies from seeking judicial review of decisions of the Commissioner of Public Welfare. App. B, P. 16A.

In the Minnesota Supreme Court, appellant again raised the issue of conflict between Minnesota Statute § 256.045 subd. 7 permitting local agencies to appeal adverse decisions of the Commissioner of Public Welfare and provisions of the Social Security Act and regulations promulgated thereunder. The Secretary of Health and Human Services (HHS) submitted a brief as amicus curiae arguing that it was the position of the United States that the Minnesota statute conflicted with Section 402(a)(3) of the Social Security Act, 42 U.S.C.

§ 602(a)(3) requiring the establishment of a single State agency to administer the State's AFDC plan. The Minnesota Supreme Court held that the statute in question did not constitute "a violation of federal AFDC law." App. A, p. 6A. 309 N.W.2d at 323. While acknowledging that 45 C.F.R. § 205.100 (b)(3) (1980) prohibits local agencies from reviewing, changing or disapproving an administrative decision of a State agency, the Court concluded that a judicial challenge by a local agency to a decision of the State agency did not constitute a violation of the regulation. The Court further held that the "goal of uniform application of the AFDC law [was] not frustrated" by permitting a local agency to appeal a decision of the State agency. App. A, p. 6A.

THE QUESTION IS SUBSTANTIAL

Introduction

This appeal presents a substantial question concerning the administration of the Congressionally enacted AFDC program which warrants plenary review by this Court. Section 402(a)(3) of the Social Security Act, 42 U.S.C. § 602(a)(3), requires states participating in the AFDC program to designate or establish a single State agency to administer or supervise the administration of the program. The question is whether Minnesota, consistent with the Social Security Act and regulations promulgated thereunder, may grant a local welfare agency a statutory right to seek judicial review of final administrative decisions rendered by the State agency responsible for the supervision of the AFDC program.

As explained below, the Social Security Act, its legislative history, regulations of the Department of Health and Human

Services ("HHS") and settled administrative interpretation of the provisions in question demonstrate that Congress intended states to establish an administrative structure whereby one State agency would be responsible for the operation of the AFDC program within the state. If states chose to involve local agencies in the day-to-day operation of the program, such local agencies act as agents of the supervising State agency and are bound by decisions of the superior State agency. By granting local agencies the right to challenge hearing decisions of the State agency, Minnesota has conferred on local agencies an independent status not contemplated by Congress in establishing the AFDC program.

1. The Minnesota Statute Conflicts with Congress' Intent that States Administer their AFDC Program in such a Manner that Final Authority Rests in a Single State Agency.

The AFDC program was a part of the original Social Security Act of 1935, 49 Stat. 620. The program is designed to provide public assistance on behalf of dependent children through a system of federal and state funding. State participation in the program is elective. In order to receive federal funding, state AFDC plans must comply with certain requirements set forth in Title IV of the Act, 42 U.S.C. § 601 et seq., as implemented by regulations of the Department of Health and Human Services, 45 C.F.R. § 200, et seq.

As a condition of eligibility, Congress has determined that states desiring to participate in the AFDC program must designate or establish in their state plan a "single State agency" to either directly administer the program or supervise the administration of the program. Section 402(a)(3) of the Social Security Act, 42 U.S.C. § 602(a)(3). State plans must also provide for granting

an opportunity for a fair hearing before the State agency where a claim is denied or not acted upon promptly. 42 U.S.C. § 602(a)(4).

Minnesota has designated the Department of Public Welfare as the State agency responsible for the supervision of the AFDC program. MINN. STAT. ANN. § 256.01 subd. 1. The program is administered locally by county welfare agencies under the direct supervision of the Department of Public Welfare. MINN. STAT. ANN. § 256.01 subd. 4(1). Rules and regulations made by the Department of Public Welfare are binding on the local agencies. MINN. STAT. ANN. § 256.01 subd. 4(2). The supervisory role of the State agency is evidenced in state statutes which authorize the commissioner of the State agency to review, on his own motion, any action or decision of a local agency. The commissioner is permitted to substitute his judgment for that of the local agency in all matters committed by law to the discretion of the local agency. MINN. STAT. ANN. § 256.045 subd. 6. Fair hearings in Minnesota are conducted by welfare referees under the "control and supervision of commissioner of public welfare." MINN. STAT. ANN. § 256.045 subd. 1. If the referee's recommended decision is accepted, the commissioner issues an appropriate order to the local agency and the applicant or recipient.

In Minnesota, hearing decisions of the commissioner are binding on local agencies unless the agency seeks judicial review. MINN. STAT. ANN. § 256.045 subd. 6. In contrast to every other state,[1] Minnesota grants local agencies who are

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[1] New York's Social Service law permits local agencies to appeal hearing decisions provided that such appeal rights have not been "determined by any federal agency to be in violation of federal law. . . ." N.Y. Social Service Law § 22(9)(b)(McKinney). HHS advised New York authorities in 1979 that the New York statute violated Section 402(a)(3) of the Social Security Act, 42 U.S.C. § 602(a)(3). See p. 11, infra.

"aggrieved" by a hearing decision of the commissioner a statutory right to seek judicial review of the decision by appealing to the district court of the county where the applicant or recipient resides. Minnesota Statute § 256.045 subd. 7 provides in pertinent part:

> Judicial Review. An applicant or recipient or local agency aggrieved by an order of the Commissioner of welfare may appeal the order to the District Court of the County responsible for furnishing assistance. . . . (emphasis supplied)

In granting local agencies the right to challenge hearing decisions of the State agency, Minnesota violates Congress' intent that the AFDC program be administered by a single State agency with state-wide authority. States desiring to participate in the AFDC program must establish a single State agency to administer the program and to provide fair hearings where individual claims are denied or not acted upon promptly. Sections 402(a)(3) and (4) of the Social Security Act, 42 U.S.C. § 602(a)(3) and (4) provide that as a condition of receiving federal financial assistance, state AFDC plans must:

> (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;
>
> (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or not acted upon with reasonable promptness;

The "single State agency" requirement of Section 402(a)(3) is compelled by the cooperative nature of the AFDC program. King v. Smith, 392 U.S. 309, 316 (1968). To avoid administrative chaos, Congress intended the federal government to look to only one agency in each state, an agency with state-wide

authority, for the administration of the AFDC program. If states use local agencies in the operation of their AFDC program, Congress intended that such agencies be subordinate to the supervising State agency.

The legislative history of Section 402 of the Act reflects Congress' intent that the AFDC program be supervised by a single State agency with final administrative authority over local agencies.

> The plan must be State-wide in operation. If, as is the case at present in several States, it is to be administered by the counties, it must not be optional with each county whether or not it will give aid to dependent children, but rather must be mandatory upon all the counties. Whether the administration is in the hands of the counties or not, there must be some direct financial participation by the State itself, and some one State agency (whether already existing, or newly established) must be charged with final administrative responsibility. (Emphasis supplied)

H.R. Rep. No. 615, 74th Cong., 1st Sess. 23 (1935).

Regulations have been promulgated by the Secretary of Health and Human Services which address the respective roles of the State and local agencies. 45 C.F.R. § 205.10(a)(1) and (16) places the responsibility on the State agency for the "fulfillment of hearing provisions" of the Act and requires the State agency to take "prompt, definitive and final administrative action" following a fair hearing. 45 C.F.R. § 205.100(b)(3), implementing the single State agency requirement of Section 402(a)(3) of the Act, prohibits local agencies from reviewing or otherwise attempting to "substitute their judgment for that of the supervising State agency. 45 C.F.R. § 205.100(b)(3) states:

> (3) In the event that any services are performed for the single State agency by other State or local agencies or offices, such agencies and offices must not have authority to review, change, or disapprove any administrative decision of the single State agency, or otherwise substitute their judgment for that of the agency as to the application of policies, rules, and regulations promulgated by the State agency.

The above regulations reflect Congress' intent that fair hearing decisions of the State agency be binding on local agencies. Granting local agencies the right to challenge fair hearing decisions of the State agency confers upon such agencies a legal status not intended by Congress in establishing the AFDC program. Congress intended local agencies to be agents of the designated "single State agency," not independent entities with authority to challenge the decisions of the State agency.

This interpretation of Section 402(a)(3) of the Social Security Act and its implementing regulations was advanced by the Secretary of the Department of Health and Human Services as amicus curiae in the Minnesota Supreme Court. The Secretary argued that Section 402(a)(3) of the Act prohibits local agencies from seeking judicial review of fair hearing decisions of the supervising State agency. Although this Court has noted in previous cases concerning the AFDC program that "the interpretation of a statute by an agency charged with its enforcement is a substantial factor to be considered in construing the statute," Youakim v. Miller, 425 U.S. 232, 235-236 (1976), citing New York Department of Social Services v. Dublino, 413 U.S. 405, 421 (1973); Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 121 (1973); Investment Co. Institute v. Camp, 401 U.S. 617, 626-627 (1971), the Minnesota Court did not address the agency's interpretation of the federal statute and implementing regulations in concluding that the Minnesota appeal statute did conflict with federal law.

The Secretary's views concerning appeal rights of local agencies were expressed on two prior occasions when the question arose in the State of New York. In 1971, HHS (then HEW) advised New York authorities that legislation granting local agencies the right to seek judicial review of final hearing decisions would

raise serious questions of non-conformity with Federal requirements and could result in loss of Federal reimbursement funds. For these reasons, the legislation was vetoed by Governor Rockefeller. Public Papers of Governor Rockefeller, 1971, Memo. No. 270, p. 501 cited in Beaudoin v. Toia, 408 N.Y.S. 2d 417 (1978). Again, in 1979, the agency advised New York that granting appeal rights to local agencies would violate Section 402(a)(3) of the Social Security Act and jeopardize the availability of federal matching funds. The agency's position[2] was contained in a letter to New York authorities from Associate Commissioner Van Lare. The letter provided in part:

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[2] The agency also stated its position on this issue in a letter from Acting Regional Commissioner for Family Assistance to counsel in a New York case. The Commissioner's letter states in part:

> Federal law requires that ultimate responsibility for the administration of a State's AFDC program lies with a single State agency. This is necessary to insure that the standards for assistance and administration . . . are mandatory throughout the State. 45 C.F.R. § 205.120(a)(1); 42 U.S.C. § 602(a)(1). Thus under Federal law and regulation, local social services districts have no independent identity for the purposes of administration of an AFDC program; they are merely the operational arm of the State in those instances where the State has elected to 'supervise' rather than to directly administer its AFDC program. Specifically with respect to fair hearing decisions, but also in all other aspects of program operation, the local agency is bound by the superior authority of the single State agency. To permit the local social services districts the authority to challenge the fair hearing determinations of the single State agency would confer upon them a legal status not contemplated by the Social Security Act and impair the ultimate authority of the single State agency, 42 U.S.C. § 602(a)(1) and (3).

The full text of the Commissioner's letter is attached as Appendix E, pp. 20A.

> By authorizing local agencies to appeal the fair hearing decisions of the State agency to the courts, Chapter 473 of the Laws of 1978 clearly does not comport with 402(a)(3) and (4) of the Act and implementing regulations. Therefore, we believe that the State law in question is not consistent with Federal State plan requirements and raises issues which could jeopardize the availability of Federal matching in the State programs for AFDC.

App. F, p. 24A.

2. Minnesota's Interpretation of the "single State agency" Requirement Directly Conflicts with Decisions of the Highest Courts of New Jersey and New York.

The Minnesota Supreme Court's decision that local agencies may seek judicial review of hearing decisions conflicts with decisions of the highest courts of two states that have considered the matter. In Essex County Welfare Board v. Dept. of Institutions & Agencies, 381 A.2d 349 (1978), cert. denied, 437 U.S. 910 (1978), the Supreme Court of New Jersey held that while the governing body of the county could seek judicial review of a fair hearing decision since the county provides a portion of the grant money, federal law precludes a local welfare agency from seeking judicial review of fair hearing decisions by its superior State agency.

> The county welfare board . . . in administering the AFDC program, is a subordinate branch of the single State agency and has no standing as such to have judicial review of fair hearing decisions by its superior agency. In its capacity as local administrator, it exercises a statutory function in the overall program. It has no other interest to assert.

Id. at 351.

The Court of Appeals of New York reached the same conclusion in Beaudoin v. Toia, 408 N.Y.S.2d 417 (1978). The court held that the "single State agency" requirement of Section 402(a)(3) of the Social Security Act and "associated Federal regulations preserve to the single State agency the conclusiveness of its rule-making authority even where . . . the social services program

is administered through a network of subdesignated local agencies. . . ." 408 N.Y.S.2d 419, 420.[3]

3. Granting Local Agencies Appeal Rights Creates the Potential for Disparate Treatment of Applicants and Recipients of AFDC.

The question of appeal rights of local agencies is important in the administration of the AFDC program. Granting local agencies the right to challenge decisions of the supervising State agency creates the potential for AFDC applicants and recipients in Minnesota receiving differing treatment because of varying local agency positions being appealed within the State.[4] Such a result would be in violation of 45 C.F.R. § 233.10(a)(1) which requires that AFDC eligibility conditions be applied on a "consistent and equitable basis throughout the state." Local agency challenges to decisions of the supervising State agency draw courts unnecessarily into the administration of the AFDC program assigned by Congress to a single State agency.

4. Minnesota Statute Burdens Applicants and Recipients of AFDC in a Manner not Intended by Congress.

The Minnesota statute granting appeal rights to local agencies affects applicants and recipients of AFDC in Minnesota

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[3] New York courts have consistently held that decisions of the supervising State agency are binding on local agencies and that such agencies may not challenge the hearing decisions of the State Commissioner. Smythe v. Lavine, 351 N.Y.S. 2d 568 (1974); Almira v. Dumpson, 401 N.Y.S.2d 367 (1977); Reed v. New York State Department of Social Services, 354 N.Y.S.2d 389 (1974); In re Ferry v. Boniface, 350 N.Y.S.2d 228 (1973).

[4] The court in Beaudoin recognized the potential for administrative confusion if local agencies were permitted to challenge the decisions of the State agency. "To recognize [an appeal] right would be to undermine the supervisory authority of the State Commissioner and to invite administrative chaos." Beaudoin v. Toia, 408 N.Y.S.2d at 419.

in a manner not contemplated by Congress. For applicants and recipients who prevail at their fair hearing before the State agency, an appeal by a local agency makes them a party to a formal review proceeding. The State agency is not an automatic party to the proceeding. MINN. STAT. ANN. § 255.045 subd. 7. Consequently, the burden is on the applicant or recipient to defend the decision of the State agency. In Minnesota,[5] as in most states, the majority of applicants or recipients are unrepresented at their fair hearings. In contrast to the informal procedures of a fair hearing, when the local agency seeks judicial review of the State agency's decision, the respondent applicant or recipient is confronted with formal procedural rules and briefing requirements. Without counsel or a procedure for the appointment of counsel in such proceedings, judicial review may occur without the participation of the applicant or recipient in the proceeding. Congress never intended for applicants or recipients who receive favorable fair hearings decisions to have the burden of defending the State agency's decision in a judicial proceeding.

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[5] In 1980, 51% of applicants and recipients in Minnesota were not represented at their fair hearings. Reports and Statistics Section, Minnesota Department of Public Welfare.

CONCLUSION

As shown above, the Minnesota statute granting local agencies the right to challenge the orders of the State agency conflicts with Congress' requirement that the AFDC program be operated by a single State agency with final administrative responsibility for the program. If states chose to use local agencies in the operation of the program, Congress intended such agencies to be bound by the decisions of the supervising State agency. The Minnesota statute undermines the authority of the State agency, creates the potential for disparate treatment of individuals applying for or receiving benefits and burdens both applicants and recipients who prevail at fair hearings in a manner not contemplated by Congress.

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,

Dated November 9, 1981.

THOMAS M. PLACE
150 South College St.
Carlisle, Pennsylvania 17013
(717) 243-4611, Ext. 240

DAVID J. RASMUSSEN
Anishinabe Legal Services
Box 157
Cass Lake, Minnesota 56633
(218) 335-2223

Attorneys for Appellant

APPENDIX A

Cass County

Simonett, J.

Cass County Welfare Department,

Respondent,

vs. 51447

Melody Wittner,

Appellant,

and

Commissioner of Public Welfare,
intervenor,

Respondent.

Endorsed
Filed August 21, 1981
John McCarthy, Clerk
Minnesota Supreme Court

S Y L L A B U S

1. A county welfare agency has standing under Minn. Stat. § 256.045, subd. 7 (1980), to seek judicial review of AFDC eligibility determinations made by the Department of Public Welfare. This statute does not conflict with applicable federal laws and regulations.

2. A county welfare agency cannot require an AFDC recipient to disclose the identity of the father of her child before considering her good-cause claim.

3. The district court properly held the decision of the Department of Public Welfare was not supported by substantial evidence.

Affirmed.

Considered and decided by the court en banc without oral argument.

O P I N I O N

SIMONETT, Justice.

The Cass County District Court, sitting as a three-judge panel, vacated an order of the Commissioner of the Department of Public Welfare (Department) finding that Melody Wittner had "good cause" for refusing to cooperate with the Cass County Welfare Department (County Agency) in establishing the paternity of her child. We granted Ms. Wittner's petition for review to this court. We agree with the district court that the County Agency had standing to appeal the Department's ruling to the district court and that the proceedings should be remanded to the Department to further evaluate the good-cause claim. Thus we affirm the district court.

Ms. Wittner gave birth to a child out of wedlock on September 5, 1975. Since December of that year, she has been receiving AFDC for her own support and that of her child. She reported to the County Agency that the child's father was unknown.

In late 1978 the Department began a procedure requiring aid recipients to cooperate with the local county agencies in establishing paternity and in collecting child support. In February 1979 the Cass County agency mailed a notice to its aid recipients, including Ms. Wittner, informing them of the cooperation requirements. Recipients were advised they could be excused from cooperating for "good cause," i.e., "if you believe that your cooperation would not be in the best interests of your child, and if you can provide evidence to support this."

On July 5, 1979, Ms. Wittner filed a good-cause claim with the County Agency, stating that her cooperation would "result in serious physical or emotional harm to the child(ren)" and that it was also "anticipated to result in physical or emotional harm to myself, which is so severe that it will reduce

my ability to care for my child(ren) adequately." Ms. Wittner also filed an affidavit in which she stated she knew the child's father. She further stated, however, that the father hit her several times when told of her pregnancy; that he hit her on another occasion when she tried to discuss her pregnancy with him; that shortly after an argument concerning her pregnancy he shot a rifle into the air; that she has been fearful of her safety; and that the father said he would deny paternity. An affidavit by Ms. Wittner's sister was also submitted, confirming the rifle incident.

The County Agency denied the claim because Ms. Wittner's failure to disclose the putative father's identity prevented it from making an investigation. Ms. Wittner appealed to the Department, which, after a hearing, first affirmed the County Agency's decision, but then, because of revisions in the AFDC regulations, issued an amended order on September 17, 1979, reversing the County Agency's ruling.

The County Agency appealed to the district court, with the Commissioner of Public Welfare intervening. The district court, first, on a preliminary motion claiming lack of understanding, refused to dismiss the appeal. Second, on the merits, the court vacated the Department's order as not supported by substantial evidence and remanded for further proceedings.

On her appeal here, Ms. Wittner raises three issues: (1) Did the County Agency have standing to appeal the Department's decision; (2) may the County Agency require an AFDC recipient to disclose the father of her child before considering her good-cause claim; and (3) is the decision of the Department either not supported by substantial evidence, or arbitrary and capricious?

1. Ms. Wittner contends that the County Agency has no standing to appeal a Department ruling. The County Agency, of course, claims it has standing and the Commissioner, as

intervenor, agrees. The Department of Health and Human Services has filed an amicus brief arguing that federal law and regulations preclude an appeal by a local agency to the state court. We hold, as did the district court, that the County Agency has standing to appeal.

The AFDC program was established by Congress. 42 U.S.C. § 601 et seq. (1976). No state is required to participate, but a state that elects to do so and shares in federal funding must comply with federal laws and regulations. One federal requirement is that a "single state agency" be designated to administer or supervise the program. 42 U.S.C. § 602(a)(3) (1976). In Minnesota, the Department of Public Welfare is the designated agency. Minn. Stat. § 245.04 (1980). Federal regulations provide:

> In the event that any services are performed for the single State agency by other State or local agencies or offices, such agencies and offices must not have authority to review, change or disapprove any administrative decision of the single State agency, or otherwise substitute their judgment for that of the agency as to the application of policies, rules and regulations promulgated by the State agency.

45 C.F.R. § 205.100(b)(3) (1979). Appellant argues this regulation precludes the County Agency from seeking judicial review.

Appellant relies primarily on three cases, namely, Reed v. New York State Department of Social Services, 354 N.Y.S.2d 389 (1974); Essex County Welfare Board v. Department of Institutions and Agencies, 75 N.J. 232, 381 A.2d 349, cert. denied, 437 U.S. 910 (1978); and Beaudoin v. Toia, 45 N.Y.2d 343, 408 N.Y.S.2d 417, 380 N.E.2d 246 (1978), each holding that a local agency may not seek judicial review of a state agency determination concerning welfare eligibility. In Reed, the director of a local welfare agency was denied judicial review of a commissioner's decision, the court relying on the absence of statutory authority to seek review and on the "single state agency" concept. In Essex County

the court ruled that the local agency's role in AFDC cases was merely that of a statutory administrator and that to allow judicial review would cause delay and uncertainty in administering the program. The court made clear, however, that the county itself would have standing to challenge an eligibility determination because it provides a substantial portion of the grant money. In Beaudoin the court reasoned that county commissioners of social services are, by statute, "agents" of the state department and do not act for the counties in making eligibility determinations; that state statutes made department decisions binding on local officials; and that federal law furthermore precluded judicial review because of the single state agency concept.

This case is not, however, like any of these three.[1] First, Minnesota, unlike New York and New Jersey, has enacted a statute conferring a right to seek review on local agencies. Minn. Stat. § 256.045, subd. 7 (1980), provides: "An applicant or recipient or local agency aggrieved by an order of the commissioner of welfare may appeal the order to the district court * * *." (Emphasis added.) If appellant's argument that the local agency is merely an administrative arm of the Department without independent interests would be accepted, the statutory term "local agency" becomes superfluous, contrary to the legislative mandate that "[e]very law shall be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.16 (1980). Second, although the county welfare board is primarily an administrative body charged with carrying out state

---

[1] Appellant and amicus also cite Stephenson v. Creasy, ____ F. Supp. ____ (S.D. Ohio 1980), but this case discusses the single state agency concept only in the context of an administrative reconsideration by the state agency of its own determination rather than judicial review.

programs under Department supervision, it is composed of the board of county commissioners plus two other members. The county welfare board prepares the budget which the board of commissioners must approve and include in the tax levy, Minn. Stat. §§ 256.72 and 256.80 (1980). The record indicates that Cass County contributes 17 to 18% of the monies paid to AFDC recipients. Plainly, the welfare board, acting as it does for the county, has a pecuniary interest here. Third, and equally important, allowing review will not disrupt administration of the program, since Minn. Stat. § 256.045, subd. 10 (1980), requires that assistance be paid during the pedency of an appeal. We hold, therefore, that the County Agency has standing under Minnesota law to seek judicial review of a decision of the Department.

Since the County Agency has standing under Minnesota law, it must next be determined if this statutory right of review conflicts with federal law. Appellant argues that Minn. Stat. § 256.045, subd. 7 (1980), contrary to the federal regulations, authorizes the local agency to "review, change, or disapprove any administrative decision of the single state agency." While a court challenge by a local agency may manifest disapproval, the disapproval is without legal effect. It is the court, not the local agency, which is empowered under the statute to review, change, or disapprove the commissioner's decision. Consequently, there is no violation of federal AFDC law. The Department's administrative authority is not limited any more than is normally the case under the Federal Administrative Procedure Act, 5 U.S.C. § 551 et seq. (1976); and the goal of uniform application of the AFDC law is not frustrated.

2. We next consider whether the County Agency acted improperly by refusing to evaluate Ms. Wittner's good-cause claim because she failed to disclose the putative father's name.

To establish good cause for failure to cooperate with child support efforts, an AFDC applicant or recipient is required by 45 C.F.R. § 232.40(c) (1979) to state the circumstances believed to constitute good cause, corroborate those circumstances in accordance with section 232.43, and, if requested, provide sufficient information (such as the putative father's name) to permit an investigation pursuant to section 232.43(g). Section 232.43(c) lists various types of corroborative records and statements that might be obtained, including law enforcement, social service and medical records and sworn statements from individuals other than the applicant or recipient. Section 234.43(g) says if the statement of the claim together with the corroborative evidence does not provide sufficient basis for making a determination, the agency may further verify the claim or conduct an investigation; this verification may, if necessary, include interviewing the putative father.

Ms. Wittner's good-cause claim was based on anticipated physical harm to herself and her child. As corroboration she submitted her sister's affidavit that the putative father had fired a rifle into the air following an argument about Ms. Wittner's pregnancy and that she believed he might harm Ms. Wittner if paternity were pursued. The caseworker, although she also felt the sister's statement concerned events too far in the past, admittedly denied the claim solely because of refusal to name the putative father.

It is clear from the regulations that the County Agency is required to make its inquiry in successive stages. Initially, the agency is to determine if good cause is established by the appellant's claim statement and corroborating evidence. Only if this information is inadequate may an investigation be undertaken, and even then circumstances may be such

that the agency should first request additional corroboration before investigating. Here the County Agency acted arbitrarily by insisting on disclosure of the putative father's name without first determining if disclosure was necessary. The error is without prejudice, however, since the record reveals that the Department applied the proper method of analysis.

3. Finally, we examine the Department's ruling that Ms. Wittner had shown good cause to determine if it is supported by substantial evidence. Although decisions of administrative agencies are entitled to deference, we conclude on this record the Department's decision to grant Ms. Wittner's claim of good cause cannot be upheld. Both the claim statement and the corroborating affidavit concern events that occurred 4 years earlier, prior to the birth of the child. The sister's affidavit corroborates only one incident. There have been no more threatening incidents since the child's birth, nor, indeed, has Ms. Wittner even spoken with the putative father. We agree with the district court that absent more current information the Department's ruling is not supported by substantial evidence.

The district court remanded the case to the Department for further proceedings. As we see it, the County Agency should have notified Ms. Wittner that her claim and corroborating affidavit were insufficient and requested the putative father's name. The agency could then conduct an investigation to determine if good cause for not cooperating existed. Presumably the Department will have the County Agency do this now. We emphasize that the agency should act with circumspection, particularly since a potential for physical harm has been alleged. Perhaps mere disclosure of the putative father's name may be enough without the need for the agency to approach

the putative father, as the agency may then have sufficient information from other sources to properly evaluate the good-cause claim.

Affirmed.

APPENDIX B

STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF CASS — NINTH JUDICIAL DISTRICT

CASS COUNTY WELFARE DEPARTMENT,

APPELLANT,

-VS-

MELODY WITTNER, File No. 21092,
RESPONDENT,

ORDER ON APPEAL FROM THE ORDER OF THE COMMISSIONER OF PUBLIC WELFARE DATED SEPTEMBER 17, 1979

AND

COMMISSIONER OF PUBLIC WELFARE,

INTERVENOR

This is an appeal from the Amended Order of the Commissioner of Public Welfare for the State of Minnesota in the case of Melody Wittner vs. Cass County Welfare Department, which Order is dated September 17, 1979 wherein appellant agency was reversed in its denial of good cause claimed by petitioner.

Mr. Michael T. Milligan, County Attorney, Cass County, Walker, Minnesota appeared and argued on behalf of the appellant. Mr. David J. Rasmussen, Attorney for respondent, Leech Lake Reservation Legal Services Project, Cass Lake, Minnesota appeared on behalf of the respondent Melody Wittner. There was no appearance on behalf of the Commissioner of Public Welfare.

Heard at Bemidji, Minnesota on April 25, 1980 before Preece, Saetre and Wyant, JJ.

REMANDED.

O P I N I O N

SAETRE, JUDGE.

This appeal is taken pursuant to Minnesota Statute 256.045 (1978).

Petitioner-Respondent Melody Wittner gave birth to a child, Calvin, out of wedlock on September 5, 1975. She has been receiving AFDC for the support of herself and her child since that time. She reported to the Cass County Welfare Department that the name of the father was unknown. In February, 1979 appellant welfare agency mass mailed information to all AFDC recipients explaining the procedure for filing a claim of "good cause" for refusing to cooperate in enforcing support from putative fathers. A questionnaire form (DPW-2338) and instructions were included with the mailing. Respondent Wittner filed her claim with the appellant welfare agency on July 5, 1979 citing reasons for her "good cause" for not cooperating as being "(1) my cooperation is anticipated to result in serious physical or emotional harm to the child and (2) my cooperation is anticipated to result in physical or emotional harm to myself, which is so serious that it will reduce my ability to care for my child adequately". Respondent further filed two affidavits, one by herself wherein she acknowledges that she knows the name of the father of her son Calvin, that the father of Calvin was angry when he learned of her pregnancy and hit her several times, that he threatened to deny paternity if she pursued legal action against him and that during the summer of 1975 prior to the birth of Calvin when she and the unborn child's father argued about her pregnancy, apparently in anger he fired a rifle into the air and that she was fearful for her safety if a paternity action was pursued. At the hearing before the Referee on August 23, 1979 she testified essentially to the same matters contained in her affidavit. In addition to the respondent's affidavit, her sister, Carol Wittner signed an affidavit to essentially the same matters contained in petitioner-respondent's affidavit.

Appellant welfare agency denied petitioner's claim of good cause because she failed to name the father in order to permit the welfare agency to make an investigation.

Respondent Wittner testified at the hearing in part as follows:

Question: Do you know who Calvin's father is?

Wittner: Yes.

Question: Up until recently you told the welfare department that you didn't know, could you explain why you did that?

Wittner: Because they never said that if I did tell them they weren't gonna turn around and go after him so he'd turn around and go after me. They never told me that if I did tell them who the father was that they wouldn't turn around and go after him for anything.

Question: Did Calvin's father ever tell you that he would deny paternity?

Wittner: Yes.

Question: Did he ever threaten you concerning what he would do with you if you did make that statement?

Wittner: He just said he would deny it.

Question: Has he ever hit you or hurt you in any way?

Wittner: Yes.

Question: How many times would you say he hit you or hurt you?

Wittner: When I told him I was pregnant he tried to make me have a miscarriage.

* * *

Question: Melody, what's your current relationship with Calvin's father?

Wittner: Nothing.

Question: The last time he threatened you then was at the time you subscribed to in the affidavit, in other words the last time he threatened you was shortly after the child was born?

Wittner: Yes.

Question: And he has not threatened you since?

Wittner: No, I haven't talked to him since.

The original Findings, Conclusions and Order of the Commissioner held that the respondent had not met the requirements of showing good cause and the appellant's denial of petitioner's good cause claim was affirmed. Thereafter the Commissioner amended his Order and found that petitioner-respondent had met her good cause claim and reversed the county agency.

The intent of 45 C.F.R., Section 232.42 governs the AFDC program and under what circumstances a mother of an illegitimate child shall have good cause not to cooperate in revealing the name of the father of her child in order that paternity may be established and obtain support assistance from the father. She must specify the circumstances sufficient for her non-cooperation and provide sufficient information "to permit investigation pursuant to Section 232.43(g). Sworn statements may be submitted to support a good cause claim if they afford sufficient information for the welfare agency to conduct an independent investigation, which statements could include court, medical, criminal, social services records, etc. which would indicate the putative father may inflict physical or emotional harm on the child or the petitioner. The regulations do not require the welfare agency to establish paternity if such action is against the best interests of the child only if there is a reasonable danger of physical or emotional harm to the child or petitioner.

It is difficult to determine exactly what the Findings of Fact are in this case since for the most part they merely recite the claims of the parties. The Conclusions recite the various Federal regulations and state in summary:

> "It is the judgment of the appeal Referee that the sworn statements supplied by the petitioner's sister corroborates the evidence and testimony presented by the petitioner and that additional information is not required.

"It should be noted for the attention of both the county agency and counsel for the petitioner that the judgment of the appeal Referee applies only in this instant case and does not necessarily set a precedent. There may be case situations in the future where sworn statements by individuals would not corroborate the good cause claim. Indeed, it may be necessary in some cases for the county agency to know the name of the alleged father to determine if there is good cause. Knowing the name of the alleged father does not necessarily mean he needs to be contacted. Contact may be within another agency, (i.e., police department) to substantiate petitioner's statements about an individual.

"In these types of case situations, certain information is required, such as the good cause claim (DPW-2338) and either medical records, police records, sworn statements, etc. to make a determination. At that point it becomes a judgment. In this instant case the judgment of the appeal Referee differs from that of the county agency and that county agency will be reversed in its decision.

"We find the Findings and Conclusions of the Referee and Commissioner to be unsupported by substantial evidence and is arbitrary."

In actuality, all the petitioner-respondent and her sister have said in their affidavits and the respondent in her testimony was that prior to the birth of the child four years ago the alleged father hit her, threatened to deny paternity if she pursued legal action and fired a rifle into the air. She has had no contact with the father since the child was born in 1975. The welfare agency was asked to accept these affidavits on face value without any supporting information whatsoever. A fair reading of the Federal regulations does not support respondent's position. The welfare agency has a duty to make a judgment of its own as to the reasonableness of petitioner-respondent's fears if any. There must be something more than an assertion by the petitioner and her sister that petitioner has a reason to be in fear of the alleged father. The welfare agency knows absolutely nothing about the alleged father. Is he young, old, married, single, employed, have an education, does he have a criminal record, if so what crimes has he been convicted of, what is the state of his physical and mental health, etc., etc.?

It would seem that a welfare agency is placed under an almost impossible handicap if the name of the alleged father is not disclosed if the welfare agency is to make a proper investigation. As the appeals Referee stated in his Conclusions, "knowing the name of the alleged father does not necessarily mean he needs to be contacted. Contact may be with another agency, for instance (i.e., police department) to substantiate the petitioner's statements about the individual."

Respondent challenges the appellant's standing to appeal the Commissioner's Order.

Federal law requires establishment of a single state agency to administer AFDC. 42 U.S.C.A. 602(a)(3). Minnesota has designated the Department of Public Welfare as the agency to administer the AFDC program. Minnesota Statute 254.04; M.S. 256.01(1). The program is administered locally by county welfare boards under the supervision of the State agency.

Respondent, relying on 45 C.F.R., Section 205.100(b)(3) which provides:

> "In the event that any services are performed for the single state agency by other state or local agencies or officers such agencies and offices must not have authority to review, change or disapprove any administrative decisions of the single state agency, or otherwise substitute their judgment for that of the agency as to the application of policies, rules and regulations promulgated by the state agency."

This appeal was taken pursuant to M.S. 256.045, Subd. 7 which provides in part:

> "Subdivision 7, Judicial Review. An applicant or recipient or local agency aggrieved by an order of the Commissioner of Welfare may appeal the order to the district court of the county responsible for providing assistance. . ." .

There is no conflict between the Federal regulation and the State statute. The local welfare board does not have authority to "review, change or disapprove . . . or otherwise substitute their judgment for that of the . . . State agency." The Commissioner has made the decision and the Statute provides that if the

local agency disagrees with that decision, it may ask the court to review. The Federal regulations do not prohibit judicial review. Clearly the appellant is an "aggrieved party". In re Getsug, 290 Minn. 110, 186 N.W.2d 686 (1971) defines the term as follows:

> "An 'aggrieved party' to whom the right of appeal is granted under a statute is one who is injuriously or adversely affected by the judgment or decree when it operates on his rights of property or bears directly on his personal interest. The word 'aggrieved' refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation."

Cass County contributes 17 or 18 percent of the money paid to all its AFDC recipients. The taxpayers of Cass County are "aggrieved" when the Commissioner's Order imposes on them a burden or obligation.

We hold that the Findings and Conclusion of the Commissioner, being unsupported by substantial evidence must be and are hereby set aside and we remand to the Commissioner for further action consistent herewith.

Dated this 12th day of May, 1980.

/s/ Warren A. Saetre
WARREN A. SAETRE
District Judge

APPENDIX C

51447

STATE OF MINNESOTA

IN SUPREME COURT

FILED
Oct. 1, 1981
(confirmed by tel)

CASS COUNTY WELFARE DEPARTMENT,

RESPONDENT,

VS.

MELODY WITTNER,

APPELLANT,

AND

COMMISSIONER OF PUBLIC WELFARE, INTERVENOR,

RESPONDENT.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY given that Melody Wittner, appellant above-named, hereby appeals to the Supreme Court of the United States from the final decision of the Minnesota Supreme Court filed in this matter on August 21, 1981, holding that Minnesota Statute § 256.045(7)(1980) does not conflict with applicable federal laws and regulations.

THIS APPEAL is taken pursuant to 28 U.S.C. § 1257(2).

Respectfully submitted this 1st day of October, 1981.

LAW OFFICES OF
ANISHINABE LEGAL SERVICES

David J. Rasmussen

DAVID J. RASMUSSEN
THOMAS M. PLACE
Attorneys for Appellant
P.O. Box 157
Cass Lake, Minnesota 56633
(218) 335-2223

AFFIDAVIT OF SERVICE

I, David J. Rasmussen, hereby state that I have served a copy of the foregoing Notice of Appeal on Michael T. Milligan, Esq., Cass County Attorney, Cass County Courthouse, Walker, Minnesota 56484, Warren Spannaus, Esq., Attorney General, State of Minnesota, State Capitol, St. Paul, Minnesota 55101, and John L. Kerwin, Esq., Special Assistant Attorney General, 515 Transportation Building, St. Paul, Minnesota 55155, by depositing a copy of the same in the U.S. Mail, first-class postage prepaid, this 1st day of October, 1981. I hereby state that I have served all parties required to be served with this Notice of Appeal pursuant to the Rules of the Supreme Court.

David J. Rasmussen

Subscribed and sworn to before me
this 1st day of October, 1981.

Maxine L. Lausche
Notary Public

APPENDIX D

MINNESOTA STATUTE § 256.045

Subd. 7. Judicial Review. An applicant or recipient or local agency aggrieved by an order of the commissioner of welfare may appeal the order to the district court of the county responsible for furnishing assistance by serving a written copy of a notice of appeal upon the commissioner and any adverse party of record within 30 days after the date the commissioner issued the order, and by filing the original notice and proof of service with the clerk of the district court. Service may be made personally or by mail; service by mail is complete upon mailing; no filing fee shall be required by the clerk of court in appeals taken pursuant to this subdivision. The commissioner may elect to become a party to the proceedings in the district court. Any party may demand that the commissioner furnish all parties to the proceedings with a copy of his decision, and a transcript of any testimony, evidence, or other supporting papers from the hearing held before the state welfare referee, by serving a written demand upon the commissioner within 30 days after service of the notice of appeal.

APPENDIX E

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
REGION II
FEDERAL BUILDING
28 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

Social Security
Administration

Joel Spitzer, Esq.
Legal Aid Society of Albany
55 Columbia Street
Albany, New York

MAR 1, 1978

Re: Clemente v. Fahey

Dear Mr. Spitzer:

This letter is written in response to your inquiry as to whether extant authority under either local or State law enabling local social services districts to institute legal action to reverse adverse fair hearing decisions of the single state agency would constitute a violation of the requirements of the Social Security Act governing the Aid to Families with Dependent Children Program (AFDC). As I have indicated to you, the Department has previously taken the position that local social services districts may not seek judicial review of fair hearing decisions in favor of claimants without violating federal requirements that an AFDC program be administered by a single State agency (42 U.S.C. § 602(a)(3)) and that a recipient be granted a fair hearing before the State agency (42 U.S.C. § 602(a)(4)).

The Social Security Act requires that the State's AFDC plan provide:

> "[F]or the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;" (42 U.S.C. § 602(a)(3)).

and

> "[F]or granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or not acted upon with reasonable promptness;". (42 U.S.C. § 602(a)(4). (emphasis added)

These statutory requirements have traditionally been interpreted to mean that the hearing shall be held by the single State agency administering the AFDC plan, and that hearing decisions cannot be challenged by subordinate entities in the State. The Federal regulations implementing section 402(a)(3) of the Act provide at 45 C.F.R. 205.100(b):

> "In the event that any services (e.g. implementation of fair hearings) are performed for the single State agency by other State or local agencies or offices, such agencies or offices must not have authority to review, change, or disapprove any administrative decision of the single State agency or substitute their judgment for that of the agency as to the regulations promulgated by the State agency."

Current regulations also explicitly state that there shall be "final administrative action" on all fair hearing requests within 90 days, 45 C.F.R. 205.10(a)(16). It has been DHEW's long-standing construction that the phase "final administrative action" requires that local social services districts implement the fair hearing decisions of the single State agency through the mailing of a check, if necessary, within the 90 day period. See, Nelson v. Sugarman, 361 F. Supp. 1132 (S.D.N.Y. 1972); 45 C.F.R. 205.10 (a)(18).

Federal regulations expressly provide that the claimant be notified of his right to judicial review "to the extent it is available to him" 45 C.F.R. 205.10(a)(17). There is no parallel reference in the Federal regulations concerning recourse to the courts by local services districts. The reason for the silence of the regulations in this regard is apparent. Federal law requires that ultimate responsibility for the administration of a State's AFDC program lies with a single state agency. This is necessary to insure that the standards for "assistance and administration . . . are mandatory throughout the State." 45 C.F.R. 205.120(a)(i); 42 U.S.C. 602(a)(i). Thus under Federal law and regulation, local social services districts have no independent identity for the purposes of

administration of an AFDC program; they are merely the operational arm of the State in those instances where the State has elected to "supervise" rather than to directly administer its AFDC program. Specifically with respect to fair hearing decisions, but also in all other aspects of program operation, the local agency is bound by the superior authority of the single State agency. To permit the local social services districts the authority to challenge the fair hearing determinations of the single State agency would confer upon them a legal status not contemplated by the Social Security Act and impair the ultimate authority of the single State agency, 42 U.S.C. § 602(a)(1) and (3).

Likewise, the statutory authority of the single State agency to determine claims for relief asserted in the fair hearing process, if the claimant so elects, may not be erroded by permitting local social services districts to challenge the determinations of the single State agency in court proceedings. 42 U.S.C. § 602(a)(4). For all of the above reasons, HEW has concluded that the granting to local social services districts the authority to commence suit to reverse fair hearing determinations would violate sections 42 U.S.C. 602(a)(1)(3), and (4) of the Social Security Act.

In this letter we have not considered questions of State law and confine our remarks solely to the application of federal law.

Sincerely,

/s/ Florence Aitchison
Florence Aitchison
Acting Assistant Regional
Commissioner for Family
Assistance

APPENDIX F

Office of Family Assistance
SEPT 24, 1979

Assistant Regional Commissioner
New York

Associate Commissioner
for Family Assistance

Right of a Local District to Challenge a DSS Decision - INFORMATION

This is a long-delayed response to your memorandum of December 13, 1978, in which you informed us that the New York State Legislature recently enacted legislation permitting local officials to challenge State hearing decisions--except where such challenge would violate Federal law. You raised the question as to whether the application of this statute to an AFDC decision by the single State agency violates Federal law. I apologize for our tardiness in replying.

Chapter 473 of the Laws of 1978 of New York State provides that county social services districts have the right to appeal to the courts fair hearing decisions made by the State Department of Social Services. We believe this legislation is in violation of Federal law and policy. Section 402(a)(4) of the Social Security Act provides an opportunity for a fair hearing before the State agency to applicants and recipients whose claim for aid to families with dependent children is denied or not acted upon with reasonable promptness. In carrying out the mandate of the Act, the Federal regulations in 45 CFR 205-10 require that the State agency be the final arbiter for the State in the dispute about which a hearing is held and that the State agency's decision be the last word with respect to the issues decided by the hearing. This decision is binding upon the State and upon local agencies administering the program. No further action by the State or local agency

contesting the fair hearing decision can be taken.

Chapter 473 of the Laws of 1978 also violates the single State agency requirement of the Act by challenging the authority of the State agency to make decisions in the administration of the State plan. Federal regulations implementing Section 402 (a)(3) of the Act require a certification that the single State agency has the authority to make its rules and regulations for the administration of the program binding on the political subdivisions in those instances where the State plan is administered by them. 45 CFR 205.100 prohibits the State agency from delegating to other than its own officials the authority for exercising administrative discretion in the administration or supervision of the plan. This regulation provides that, in the event other State or local agencies perform services for the single State agency, these other agencies must not have the authority to "review, change, or disapprove any administrative decision" of the State agency or to otherwise "substitute their judgment for that of the State agency." (45 CFR 205.100(b)(3)) The effect of Chapter 473 of the New York Laws of 1978 is that fair hearing decisions of the State agency are not binding on local agencies.

By authorizing local agencies to appeal the fair hearing decisions of the State agency to the courts, Chapter 473 of the Laws of 1978 clearly does not comport with 402(a)(3) and (4) of the Act and implementing regulations. Therefore, we believe that the State law in question is not consistent with Federal State plan requirements and raises issues which could jeopardize the availability of Federal matching in the State programs for AFDC.

Thank you for bringing this issue to our attention and we trust that these comments are helpful to you in facilitating your continuing work with the State regarding the problem.

Barry L. Van Lare

Motion to Dismiss or Affirm

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DEC 16 1981
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SUPREME COURT, U.S.

NO. 81-5709

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

MELODY WITTNER,

Appellant,

vs.

CASS COUNTY WELFARE DEPARTMENT
AND
COMMISSIONER OF PUBLIC WELFARE,

Appellees.

ON APPEAL FROM THE
SUPREME COURT OF MINNESOTA

APPELLEES' MOTION TO DISMISS OR AFFIRM

WARREN SPANNAUS
Attorney General
State of Minnesota

Counsel of Record: KENT G. HARBISON
Assistant Attorney General
515 Transportation Building
Saint Paul, Minnesota 55155
Telephone: (612) 296-7537

Of Counsel: JOHN L. KIRWIN
Special Assistant Attorney General
515 Transportation Building
Saint Paul, Minnesota 55155
Telephone: (612) 296-6628

Of Counsel: MICHAEL T. MILLIGAN
Cass County Attorney
Cass County Courthouse
Walker, Minnesota 56484
Telephone: (218) 547-3300

Attorneys for Appellees

QUESTION PRESENTED BY THIS APPEAL

Does a state statute which grants a county welfare agency the right to seek judicial review of a "fair hearing" decision of the state agency charged with administering the Aid to Families with Dependent Children ("AFDC") program conflict with Section 402(a)(3) of the Social Security Act and regulations promulgated thereunder requiring the establishment of a single State agency to administer the State's AFDC plan?

TABLE OF CONTENTS

Page

QUESTION PRESENTED BY THIS APPEAL..... i

I. MOTION TO DISMISS OR AFFIRM..... 1

II. INTRODUCTION..... 2

III. OPINIONS BELOW..... 2

IV. JURISDICTION..... 2

V. STATUTORY PROVISIONS AND REGULATIONS..... 2

VI. STATEMENT OF THE CASE..... 3

VII. ARGUMENT..... 5

A. Appellant Lacks Standing to Appeal to This Court... 5

B. The Decision Of The Minnesota Supreme Court Was Clearly Correct..... 7

1. The Federal Statute..... 8

2. Legislative History and Regulations..... 10

3. Interpretation of Federal Agency..... 11

4. Policy Arguments..... 13

5. Summary..... 15

C. Appellant Has Not Raised a Substantial Federal Question..... 15

VIII. CONCLUSION..... 18

APPENDIX A - Letter from Mary L. Schmid, September 11, 1979..... 1A

APPENDIX B - Letter from Regional Commissioner Paul E. Webb, December 5, 1979..... 3A

TABLE OF AUTHORITIES

Page

Cases

Beaudoin v. Toia, 45 N.Y.2d 343, 380 N.E.2d 246, 408 N.Y.S.2d 417 (1978)..... 16

Essex County Welfare Board v. Dept. of Institutions & Agencies, 75 N.J. 232, 381 A.2d 349 (1977), cert. denied, 437 U.S. 910 (1978)..... 16, 17

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Daniel, 439 U.S. 551 (1979)..... 12

King v. Smith, 392 U.S. 309 (1968)..... 8

Leary v. United States, 395 U.S. 6 (1969)..... 12

Public Service Commission of Missouri v. Brashear Freight Lines, 306 U.S. 204 (1939), rehearing denied 306 U.S. 669 (1939).... 7

Ray v. Atlantic Richfield Company, 435 U.S. 151 (1978)..... 10

Reynolds v. Sims, 377 U.S. 533 (1964), rehearing denied 379 U.S. 870 and 871 (1964)..... 9

Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1947)..... 10

Townsend v. Swank, 404 U.S. 282 (1971)..... 8

Statutes

28 U.S.C. § 1257(2)..... 2

42 U.S.C. § 602..... 8

42 U.S.C. § 602(a)(3)..... 2, 4, 5, 8, 9, 10

42 U.S.C. § 602(a)(4)..... 9

Minn. Stat. § 256.01, subd. 1 (1980)..... 8

Minn. Stat. § 256.01, subd. 4 (1980)..... 8

Minn. Stat. § 256.01, subd. 4(2) (1980)..... 8

Minn. Stat. § 256.045 (1980)..... 9

Minn. Stat. § 256.045, subd. 3 (1980)..... 9

Minn. Stat. § 256.045, subd. 5 (1980)..... 9

Minn. Stat. § 256.045, subd. 7 (1980)..... Passim

Minn. Stat. § 256.045, subd. 8 (1980)..... 18

Minn. Stat. § 393.07, subd. 2 (1980)..... 8, 9

Regulations

45 C.F.R. § 205.10(a)(1)(ii)..... 14

45 C.F.R. § 205.100(b)(3) (1980)..... 3, 5, 1[illegible]

45 C.F.R. § 232.40..... 4

45 C.F.R. § 232.47..... 7

45 C.F.R. § 233.10(a)(1)..... 13

Miscellaneous

H.R. Rep. No. 615, 74th Cong., 1st Sess. (1935)..... 11

NO. 81-5709

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

MELODY WITTNER,

Appellant,

vs.

CASS COUNTY WELFARE DEPARTMENT
AND
COMMISSIONER OF PUBLIC WELFARE,

Appellees.

ON APPEAL FROM THE
SUPREME COURT OF MINNESOTA

APPELLEES' MOTION TO DISMISS OR AFFIRM

I. MOTION TO DISMISS OR AFFIRM

Appellees, pursuant to Rule 16.1(b) and (d) of the Rules of the Supreme Court of the United States, move to dismiss this appeal or to affirm the decision of the Minnesota Supreme Court.[1/]

The grounds for this motion are that appellant lacks standing to make this appeal, this case does not present a substantial federal question, the question is so unsubstantial as not to warrant further argument and the case was correctly decided by the Minnesota Supreme Court.

1/ Although the positions of the appellees did not coincide on every issue raised before the Minnesota Supreme Court, appellees have taken the same position throughout these proceedings concerning the single issue raised on this appeal. Consequently, appellees proceed jointly on this motion.

II. INTRODUCTION

Appellant appeals from the decision of the Minnesota Supreme Court holding that Minn. Stat. § 256.045, subd. 7 (1980), which grants county welfare agencies the right to seek judicial review of "fair hearing" decisions of the Minnesota Commissioner of Public Welfare, does not conflict with section 402(a)(3) of the Social Security Act, 42 U.S.C. § 602(a)(3), and regulations promulgated thereunder requiring states to administer the Aid to Families with Dependent Childen ("AFDC") program through a "single State agency."[2/]

III. OPINIONS BELOW

The opinion of the Minnesota Supreme Court is reported at 309 N.W.2d 320 (Minn. 1981). Jurisdictional Statement, App. A, pp. 1A-9A.[3/] The Cass County District Court decision is unreported. Jurisdictional Statement, App. B, pp. 10A-16A.

IV. JURISDICTION

The decision of the Minnesota Supreme Court was filed on August 21, 1981. Notice of appeal to this Court was filed in the Supreme Court of Minnesota on October 1, 1981. Jurisdictional Statement, App. C, p. 17A. Appellant invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(2).

V. STATUTORY PROVISIONS AND REGULATIONS

Section 402(a)(3) of the Social Security Act, 42 U.S.C. § 602(a)(3), requires that, to be eligible for federal financial assistance, state AFDC programs must:

2/ "Fair hearing" is the term used in 42 U.S.C. § 602(a)(4) to describe the administrative hearing given to a welfare applicant or recipient whose claim for benefits is denied or not acted upon with reasonable promptness. The term "fair hearing" will be used throughout the motion to refer to this type of hearing.

3/ Documents referred to in this motion which are appended to appellant's Jurisdictional Statement will not be appended to this motion. Reference to such documents will be prefaced by the phrase "Jurisdictional Statement."

> (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

Federal regulations provide, at 45 C.F.R. § 205.100(b)(3) (1980), that:

> (3) In the event that any services are performed for the single State agency by other State or local agencies or offices, such agencies and offices must not have authority to review, change, or disapprove any administrative decision of the single State agency, or otherwise substitute their judgment for that of the agency as to the application of policies, rules and regulations promulgated by the State agency.

Minn. Stat. § 256.045, subd. 7 (1980), provides in part:

> Judicial Review, An applicant or recipient or local agency aggrieved by an order of the commissioner of welfare may apeal the order to the district court of the county responsible for furnishing assistance . . . .

The full text of section 256.045, subd. 7, appears in the Jurisdictional Statement, App. D, p. 19A.

VI. STATEMENT OF THE CASE

Appellant Melody Wittner has received AFDC benefits since 1975.[4/] At that time, appellant told the Cass County Department of Social Services ("local agency" or "county agency") that the father of her three-month-old son was unknown. In February, 1979, the county agency notified appellant that she was required to cooperate with the agency in establishing paternity and support from the father of her then four-year-old son, unless she had "good cause" for not doing so. The notice set forth the requirements for establishing good cause under the federal regulations. Appellant then admitted that she knew the identity of the child's father. However, based on the father's violent conduct when he was informed

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4/ This Statement does not include citations to the record, since the record is not presently before the Court. The facts contained in this Statement are found in the decisions of the Minnesota Supreme Court and District Court appended to Appellant's Jurisdictional Statement as Appendices A and B, respectively. The facts are not disputed.

of the pregnancy, appellant filed a good cause claim with the agency pursuant to 45 C.F.R. § 232.40. Appellant filed affidavits from herself and her sister in support of her claim, describing the behavior of the child's father four years earlier.

Following denial of her good cause claim by the local agency, appellant requested a fair hearing before an appeals referee of the State Department of Public Welfare. The administrative hearing was held on August 23, 1979. The referee's initial decision of September 4, 1979, affirming the denial of appellant's good cause claim, was erroneously based on regulations which had been withdrawn. Thereafter, on September 18, 1979, the referee issued an amended order, subsequently adopted by the Commissioner of Public Welfare ("Commissioner"). The Commissioner ruled that the county agency's refusal to consider appellant's good-cause claim simply because appellant failed to furnish the father's name was in error. Furthermore, the Commissioner found that the affidavits submitted by appellant to the county agency were sufficient to establish good cause.

On October 5, 1979, the county agency appealed the Commissioner's decision to the Cass County District Court pursuant to Minn. Stat. § 256.045, subd. 7. Appellant moved to dismiss the appeal, arguing that 42 U.S.C. § 602(a)(3), and regulations promulgated thereunder, prohibit a local agency from appealing the fair hearing decision of the State agency. On May 12, 1980, a three-judge panel of the District Court denied appellant's motion to dismiss, concluding that there was no conflict between the Minnesota statute and the federal law. The Court stated that "federal regulations do not prohibit" local agencies from seeking judicial review of decisions of the Commissioner. Jurisdictional Statement, App. B, p. 16A. On the merits of the county's appeal, the District Court found that there was not substantial evidence to support the Commissioner's determination that appellant had met her burden of establishing her good-cause claim. Id.

On June 5, 1980, appellant appealed to the Minnesota Supreme Court. Appellant again argued that Minn. Stat. § 256.045, subd. 7, conflicts with the provisions of the Social Security Act and regulations. The Secretary of Health and Human Services (HHS) submitted a brief as amicus curiae arguing that the Minnesota statute conflicted with 42 U.S.C. § 602(a)(3). The Minnesota Supreme Court held that the statute in question did not constitute "a violation of federal AFDC law." Jurisdictional Statement, App. A, p. 6A; 309 N.W.2d at 323. While acknowledging that 45 C.F.R. § 205.100(b)(3) (1980) prohibits a local agency from reviewing, changing or disapproving an administrative decision of a state agency, the Court concluded that a judicial challenge by a local agency to a decision of the state agency did not constitute a violation of the regulation. The Court noted that it is the court, not the local agency, which is empowered to review, change or modify the administrative decision.

Concerning the "good cause" claim, the Minnesota court held that the local agency had improperly refused to consider appellant's good cause claim. Jurisdictional Statement, App. A, p. 8A, 309 N.W.2d at 324. However, the Court held that the Commissioner had also erred in determining that the documentation furnished by appellant to the local agency was sufficient to establish her good cause claim. Id. Consequently, the Court affirmed the District Court's order remanding the matter to the Department of Public Welfare and the county agency to obtain additional information from appellant and to consider her good-cause claim.

VII. ARGUMENT

A. Appellant Lacks Standing to Appeal to This Court.

In her appeal to the Minnesota Supreme Court, appellant raised three issues:

> (1) Did the County Agency have standing to appeal the Department's decision; (2) may the County Agency require an AFDC recipient to disclose the father of her child before considering her good-cause claim; and (3) is the decision of the Department either not supported

by substantial evidence, or arbitrary and capricious?

Jurisdictional Statement, App. A, p. 3A; 309 N.W.2d at 322. Only the first issue is raised by appellant on this appeal.

The Minnesota Supreme Court resolved one of the issues in favor of appellant, and two of the issues against her. The Court held (1) that the county agency did have standing to appeal and that such standing was not precluded by federal law, (2) that the county agency may not require the disclosure of the father's name in order to consider the good-cause claim, and (3) that the Commissioner's decision that appellant's affidavits were sufficient was unsupported by substantial evidence.

As a result of these decisions, appellant lost on the procedural issue of whether the county agency would be permitted to appeal. However, she prevailed on the merits of the case. The Minnesota Supreme Court held that the county agency could not refuse to consider the documentation submitted in support of appellant's good-cause claim simply because she did not furnish the father's name. It is true that the court held that the two affidavits submitted by appellant were insufficient, because they concerned events that were too remote in time (having occurred some four years earlier). Under the court's ruling, however, appellant may now attempt to support her good-cause claim by submitting additional affidavits providing current information concerning the father of the child. The sufficiency of such corroboration must be considered by the county agency even absent the provision of the name of the father.

At the fair hearing before the appeals referee, appellant's representative stated that appellant sought the opportunity to submit additional information concerning the child's father by affidavit, without furnishing the father's name. Appellant's representative repeated the offer in a letter submitted to the appeals referee after the hearing. App. A, p. 2A. Appellant's representative told the referee that "the major point of the hearing was to determine whether naming the absent parent is

essential to establishing good cause for non-cooperation." Id., p. 1A.

The ruling by the Minnesota court that the affidavits submitted by appellant were insufficient does not adversely affect appellant's status as an AFDC recipient. Appellant's AFDC grant has never been suspended, terminated or reduced pending this appeal. She is currently receiving AFDC, and she will suffer no loss of benefits as a result of the decision by the Minnesota court.

Under the federal good-cause regulations, at 45 C.F.R. § 232.47, the county agency is required to review periodically a recipient's good-cause claim, if the circumstances of the claim are subject to change. Consequently, irrespective of the Minnesota Supreme Court's decision on the sufficiency of the documentation submitted by appellant more than two years ago, the federal regulations require the county agency to obtain current information supporting the good cause claim.

Thus, even if appellant were to prevail on the procedural issue she raises in this Court, she would gain nothing in terms of her AFDC grant. She has lost no AFDC benefits. The county agency may require her to provide updated information, but she has established in the Minnesota Supreme Court that she may be able to establish good cause without disclosing the identity of the father.

Consequently, appellant lacks standing to appeal the procedural issue to this court. Having obtained the result she initially sought, she is not aggrieved by the decision of the Minnesota Supreme Court. A party finally prevailing on the merits does not have standing to appeal a defeat in a preliminary skirmish. Public Service Commission of Missouri v. Brashear Freight Lines, 306 U.S. 204 (1939), rehearing denied 306 U.S. 669 (1939).

B. The Decision Of The Minnesota Supreme Court Was Clearly Correct.

The only issue raised by this appeal is whether Minn. Stat. § 256.045, subd. 7 (1980), which allows local agencies to appeal the fair hearing decisions of the Commissioner in AFDC matters, conflicts with applicable federal statutes and regulations

to such an extent that the state statute must be rendered invalid. The Minnesota Supreme Court held that there was not such a conflict. As will be shown below, the decision of the Minnesota court was clearly correct.

1. The Federal Statute.

The AFDC program is one of three major public assistance programs established by the Social Security Act of 1935. The program is based on a scheme of "cooperative federalism." It is funded by the state, federal and (in some states, including Minnesota) county governments. It is designed to provide public assistance on behalf of dependent children through a system of federal and state funding. King v. Smith, 392 U.S. 309, 313-316 (1968).

The AFDC program is administered at the state, rather than the federal, level. States are not required to participate in the program. However, those states which do participate must comply with certain requirements set forth in federal statutes and regulations in order to be eligible for the receipt of federal funds. Id., at 316-317; 42 U.S.C. § 602. This Court has held that any law of a state participating in the AFDC program which conflicts with the federal law setting forth requirements for the program is invalid under the Supremacy Clause. Townsend v. Swank, 404 U.S. 282, 285-86 (1971).

Congress has mandated that states which elect to participate in an AFDC program must designate or establish a single State agency to supervise the administration of the AFDC program in the state. 42 U.S.C. § 602(a)(3). Minnesota statutes designate the Commissioner as the "State agency" for the purposes of the Social Security Act. Minn. Stat. § 256.01, subd. 1 (1980).

Minnesota law provides that the AFDC program is to be administered by Minnesota's 87 counties, subject to the supervision of the Commissioner. Minn. Stat. §§ 256.01, subd. 4 and 393.07, subd. 2 (1980). County welfare boards are required to administer the program in accordance with rules and regulations promulgated by

the Commissioner. Minn. Stat. §§ 256.01, subd. 4(2) and 393.07, subd. 2 (1980).

Federal law provides that a state participating in the AFDC program must provide an opportunity for a "fair hearing" to any person whose claim for AFDC is denied or not acted upon with reasonable promptness. 42 U.S.C. § 602(a)(4). The Minnesota Legislature has provided for such fair hearings in Minn. Stat. § 256.045 (1980). Fair hearings are held by a state welfare referee appointed by the Commissioner. Id., subd. 3. Based upon the evidence adduced at the hearing, the welfare referee makes a "recommended order" which is then acted upon by the Commissioner. Id., subd. 5.

Judicial review of the Commissioner's fair hearing decisions is provided by Minn. Stat. § 256.045, subd. 7 (1980). That statute provides in relevant part:

> Judicial Review. An applicant or recipient or local agency aggrieved by an order of the commissioner of welfare may apeal the order to the district court of the county responsible for furnishing assistance . . . .

The quoted language expressly provides that, when a decision is rendered in favor of the recipient and against the local agency, the local agency may appeal the Commissioner's decision to the State District Court. The Minnesota Supreme Court so held in this case. Jurisidictional Statement, App. A, p. 6A; 309 N.W.2d at 323.

Appellant asserts that this provision of Minnesota law, allowing local agencies to appeal the Commissioner's fair hearing decisions, conflicts the requirement of 42 U.S.C. § 602(a)(3) that a state participating in the AFDC program must establish a single State agency to administer the AFDC program. As a result, appellant argues, the Minnesota law must be held invalid.

Such an inquiry must start with an acknowledgment that a state statute is not to be stricken down lightly. This Court has said that the Supremacy Clause comes into play when there is an "unavoidable conflict" between the state and federal law. Reynolds v. Sims, 377 U.S. 533 (1964), rehearing denied 379 U.S. 870 and 871

(1964). In considering whether a federal legislative scheme was intended by Congress to supersede state legislation in the same area, this Court has said "We start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." Ray v. Atlantic Richfield Company, 435 U.S. 151, 157 (1978), quoting from Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947). (Emphasis added.)

The decision of the Minnesota Supreme Court that Minn. Stat. § 256.045, subd. 7, does not conflict with the federal law is undoubtedly correct. This is especially true in light of the principle that a conflict between state and federal law must be unavoidable in order to render the state law invalid.

The interpretation of the federal statute asserted by appellant does not appear on the face of that statute. The statute, 42 U.S.C. § 602(a)(3), provides that state AFDC plans must:

> (3) Either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

As pointed out above, Minnesota has designated the Commissioner as the single State agency responsible for supervision of the AFDC program in Minnesota, thus satisfying the express requirement of 42 U.S.C. § 602(a)(3). The statute does not go beyond that. It does not contain a prohibition against local agencies seeking judicial review of the decision of the state agency.

2. Legislative History and Regulations.

Apparently recognizing the lack of such language in the federal statute, appellant cites several external sources to support her interpretation of the statute.

Appellant contends that the congressional committee report issued at the time the AFDC program was first enacted in 1935 supports her contention that a local agency may not appeal the fair hearing decision of a state agency. She cites language from the report stating that, in states where the program is administered at

the county level, "some one State agency . . . must be charged with final administrative responsibility." H.R. Rep. No. 615, 74th Cong., 1st Sess. 23 (1935).

Appellant also looks to regulations promulgated by the Secretary of Health and Human Services concerning the administrative authority of the State agency. 45 C.F.R. § 205.100(b)(3) states:

> (3) In the event that any services are performed for the single State agency by other State or local agencies or offices, such agencies and offices must not have authority to review, change, or disapprove any administrative decision of the single State agency, or otherwise substitute their judgment for that of the agency as to the application of policies, rules and regulations promulgated by the State agency.

Appellant argues that the legislative report and the administrative regulation quoted above reflect Congress' intent that fair hearing decisions of the State agency may not be appealed by local agencies.

While appellant did not cite the legislative report to the Minnesota Supreme Court, she did argue strenuously that the Minnesota law allowing appeals of fair hearing decisions by local agencies conflicted with the federal regulation just quoted. The opinion of the Minnesota court addressed that argument squarely:

> Appellant argues that Minn. Stat. § 256.045, subd. 7 (1980), contrary to the federal regulations, authorizes the local agency to "review, change or disapprove any administrative decision of the single state agency." While a court challenge by a local agency may manifest disapproval, the disapproval is without legal effect. It is the court, not the local agency, which is empowered under the statute to review, change, or disapprove the commissioner's decision.

Jurisdictional Statement, App. A, p. 6A; 309 N.W.2d at 322.

3. Interpretation of Federal Agency.

Appellant notes that the Secretary of Health and Human Services submitted an amicus curiae brief to the Minnesota Supreme Court arguing that the federal statute and regulations cited by appellant preclude local agency appeals of state fair hearing decisions. Appellant also emphasizes that the federal agency has taken that position on two prior occasions in the State of New York.

Appellant cites cases of this Court standing for the proposition that "the interpretation of a statute by an agency charged with its enforcement is a substantial factor to be considered in construing the statute." Jurisdictional Statement at p. 10.

The position of HHS is not as clear as appellant's Jurisdictional Statement suggests. At an earlier stage in this case, appellant's counsel solicited the view of the Regional Office of the Department of Health, Education and Welfare (the predecessor to HHS) for the region which includes Minnesota. Appellant's counsel received a response from HEW Regional Commissioner Paul E. Webb. App. B, p. 3A. The HEW letter sent to appellant's counsel demonstrates that it was not HEW's view that current federal law prohibits fair hearing appeals by local agencies. While indicating HEW's distaste for such appeals, Commissioner Webb said:

> The most significant aspect is the court's option to accept an appeal from a local agency, there is nothing currently in effect that would inhibit their acting on such an appeal. The intent is to constrain local agencies from generating such appeals. It is apparent that this is done more informally than through clear mandates.

(Emphasis added.) Commissioner Webb commented that HEW was proposing a revision of its fair hearing regulations which would provide that a local agency may not appeal a state fair hearing decision.

It is apparent that HEW did not have a well-established position concerning the meaning of the federal statute and HEW's own regulations. In light of these varying opinions from the agency itself, it is not appropriate to accord deference to the interpretation of HEW or its successor, HHS. Only consistent, longstanding interpretations of administrative agencies are entitled to substantial weight. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Daniel, 439 U.S. 551, 566, n. 20 (1979); Leary v. United States, 395 U.S. 6, 25 (1969). What is apparent from these differing opinions within the agency itself is that the agency recognizes that its own regulation does not prohibit appeals by local agencies, and that it is

dissatisfied with that result, even to the extent of proposing a revision of the regulation.

4. Policy Arguments.

Finally, appellant cites several "public policy" reasons why local agencies should not be allowed to appeal fair hearing decisions. She argues that appeals by local agencies will create the potential for varying treatment of AFDC applicants and recipients in Minnesota because of varying local agency positions being appealed within the state. Appellant argues that such a result would violate 45 C.F.R. § 233.10(a)(1), which requires that AFDC eligibility conditions be applied on a "consistent and equitable basis throughout the state." This is responded to in two ways.

First, the Minnesota Legislature specifically provided that, if the Commissioner, local welfare referee or District Court rules in the recipient's favor, benefits will be paid pending an appeal by the local agency to the next level. Consequently, if the Commissioner issues similar decisions in two cases and the county agency appeals in only one of the cases, the recipient in that case would receive benefits pending a determination by the District Court. That recipient would not be treated differently from the other recipient until a court had determined that the Commissioner's decision was incorrect.

Second, even in a case where there would be a difference in treatment between recipients pending appeal,[5/] the difference would be no greater than in a situation where local agencies had made different initial decisions, resulting in different treatment of recipients pending appeal to the state agency. The same would be true when local appeals referees render varying decisions which would stand pending appeal to the Commissioner.[6/] Thus, the federal

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5/ Such situations would be rare. An example of such a situation would be where the county agency appealed the Commissioner's decision to the district court and prevailed. If the recipient then appealed to the State Supreme Court, state law would not require that benefits be paid pending the appeal.

6/ The federal regulations allow a state to provide appeal hearings at the county level with a right of appeal to the

(Footnote Continued)

regulations, while requiring consistent and equitable treatment throughout the state, recognize that there may be differing treatment while appeal procedures run their normal course.

A second policy reason asserted by appellant in support of her position is that appeals by local agencies would undermine the supervisory authority of the Commissioner and invite administrative chaos. These arguments were also asserted by the appellant in the lower courts. However, appellant has not provided any example of administrative chaos which has resulted from Minnesota's law, nor has she cited any instance where the supervisory authority of the Commissioner was undermined. It has been the Commissioner's position throughout these proceedings that Minnesota's five years of experience under Minn. Stat. § 256.045, subd. 7, demonstrates that the parade of horribles feared by the appellant are not real. Allowing appeals by local agencies promotes a healthy working relationship between the State and the counties and consequently, enhances the Commissioner's supervisory authority.

Finally, appellant argues that an appeal by the local agency draws the AFDC applicant or recipient unwillingly into a formal judicial procedure with which he or she may not be competent to deal. Appellant cites statistics from the Department of Public Welfare showing that, in 1980, just over half of applicants or recipients were not represented by legal counsel at fair hearings. This argument is unpersuasive, since high quality legal services (such as those provided to appellant here) are available to welfare applicants and recipients throughout the State of Minnesota. In this case, in fact, appellant was represented by legal counsel at the fair hearing, while the county agency was not. Furthermore, appellant has not cited any data on the more relevant question of what percentage of recipients are represented in District Court appeals taken by county agencies.

(Footnote Continued)

state agency. 45 C.F.R. § 205.10(a)(1)(ii). The Commissioner has appointed local referees in certain counties, not including Cass County.

There is, of course, a very important public policy reason which supports the right of a local agency to appeal a fair hearing decision by the State agency, and this public interest is illustrated by this case. In implementing the AFDC program, the Commissioner and the county agencies are required to interpret not only Minnesota statutes and rules, but also a complex set of federal statutes and regulations and a substantial body of case law, both state and federal. The public interest requires that, to the greatest extent possible, the final decisions of the State agency be correct.

Allowing an appeal to the District Court by only one party does not promote the public interest in obtaining correct decisions. In this case, for example, the Minnesota Supreme Court held that the Commissioner's determination as to what factors were necessary to establish a good clause claim were incorrect. In doing so, the Court not only corrected the decision in this case, but also illuminated the law in a very complex area.

5. Summary.

The decision of the Minnesota Supreme Court is clearly correct. While the federal statute requires the designation of a single State agency to supervise the administration of the AFDC program in the state, the statute clearly does not prohibit the seeking of judicial review by local agencies which bear part of the cost of the program. The Minnesota Supreme Court recognized that the federal regulation provides that a local agency may not "review, change, or disapprove any administrative decision of the single State agency," but the Court held that the Minnesota law does not allow the local agency to take such action. Instead, Minnesota law only allows the county agency to seek such action from the District Court. Finally, the position of the federal agency, HHS, has been neither consistent nor longstanding, and it should not be given deference.

Surely there is no unavoidable conflict between state and federal law. Because the decision of the Minnesota Supreme Court is obviously correct, the question raised by appellant is not so substantial as to properly invoke the jurisdiction of this Court. Even if the jurisdiction of the Court is properly invoked, the Minnesota court's decision should be summarily affirmed without further argument.

C. Appellant Has Not Raised a Substantial Federal Question

The question raised by appellant's appeal, whether a local agency may appeal the fair hearing decision of a state agency, is not a substantial federal question. This is so primarily because the decision of the Minnesota Supreme Court is, as argued above, so clearly correct. In addition, however, there are several other reasons why the question raised by appellant is not substantial.

Contrary to appellant's assertions, the decision of the Minnesota Supreme Court is not in direct conflict with the decisions of other state high courts. Appellant argues that the Minnesota decision is in direct conflict with the decisions in Essex County Welfare Board v. Dept. of Institutions & Agencies, 75 N.J. 232, 381 A.2d 349 (1977), cert. denied, 437 U.S. 910 (1978), and Beaudoin v. Toia, 45 N.Y.2d 343, 380 N.E.2d 246, 408 N.Y.S.2d 417 (1978).

In both Essex County and Beaudoin, the courts held that local agencies did not have standing to appeal the fair hearing decisions of the state agencies in those states. While the courts indicated that federal law would preclude such appeals, in each case the court found that state law also denied standing to the local agency to appeal.

Consequently, in both Beaudoin and Essex County, references to federal law were unnecessary to the decisions rendered. In each case, there was an adequate and independent basis in state law for the decision. In neither case was there a state law which expressly provided for appeals by the local agency.

The Minnesota Supreme Court is the only state high court which has squarely addressed the question of whether a state law providing for appeals by local agencies of fair hearing decisions conflicts with the federal statute and regulation relied upon by appellant. There are not conflicting decisions.[7/]

An additional reason why the question raised in this case is not substantial is that it affects only one state. Appellant states in her Jurisdictional Statement that Minnesota is the only state which expressly grants local agencies the right to appeal fair hearing decisions. Jurisdictional Statement, pp. 7-8. Moreover, if the federal agency, HHS, felt sufficiently strongly that local agencies should not be permitted to appeal fair hearing decisions, it could simply amend its rules to clearly prohibit such appeals. In fact, Commissioner Webb stated in his letter to appellant's counsel that such a revision was being proposed. App. B, p. 3A.[8/]

A final reason why this Court should reject this appeal is that, because of the manner in which the question first arose, the record is not adequate for consideration by this Court. The question of the county's ability to appeal the fair hearing decision was not raised until the appeal to the District Court. As a result, there was not opportunity for discovery or full development of the record on several matters which would have a bearing on the Court's decision.

7/ It is noteworthy that the court in Essex held that, while the local welfare agency could not appeal the state fair hearing decision, the county (which provided a substantial portion of the AFDC benefits) could appeal the decision of the state agency. In this case, the Minnesota Supreme Court noted that the local agency, the county welfare board, is composed of the entire board of county commissioners plus two other members. The Minnesota court held, as a matter of state law, that "Plainly, the welfare board, acting as it does for the county, has a pecuniary interest here." Jurisdictional Statement, App. A, p. 6A; 309 N.W.2d at 323. Thus, even the reasoning of the Essex case would not preclude an appeal by the county welfare board in this case.

8/ If HHS would formally propose to revise its regulations in that manner, HHS would be required to subject the proposal to public comment and to carefully consider whether its fears of chaos and undermining of the administrative authority of the state agency have any basis. If it chooses to take that course, the agency would be well advised to look at Minnesota's experience under section 256.045, subd. 7.

For example, although statements have been made about the position of HHS on the question at issue, there was no opportunity for discovery to determine the longevity or the consistency of the HHS position. Certainly such an inquiry would be appropriate in determining whether any deference should be given to HHS' current position. While Minn. Stat. § 256.045, subd. 8 (1980), provides that the District Court may take new evidence in certain limited situations, HHS did not choose to play any part in these proceedings until the matter reached the Minnesota Supreme Court, at which time there was no opportunity for discovery concerning HHS' position.

Similarly, appellant asserts in her Jurisdictional Statement (for the first time in this case) that just under one-half of applicants or recipients are represented by counsel at fair hearings. To the extent that such a consideration has any bearing on this case, the more important question is what percentage of applicants or recipients are represented by counsel on District Court appeals by local agencies. Such data are not available in the public record, and there is no opportunity to develop those factual data for the record on this appeal.

Appellant has not raised a substantial federal question. The decision of the Minnesota court is clearly correct. There is no direct conflict between the Minnesota decision and the decisions of other state high courts. Minnesota is the only state with a statute specifically allowing local agency appeals, and HHS could revise its regulation to prohibit such appeals, if it reasonably found that such action was necessary. Finally, because this question first arose on appeal, there was no opportunity for adequate discovery or to develop a full factual record to allow this Court to make an adequate review.

VIII. CONCLUSION

Appellant lacks standing to take this appeal, since she prevailed on the merits of the case in the Minnesota Supreme Court. Moreover, there is no unavoidable conflict between Minn. Stat. § 256.045, subd. 7, and the federal statute and regulations cited by

appellant. Thus, the decision of the Minnesota Supreme Court is correct. For these reasons and for the other reasons stated above, this appeal does not raise a substantial question sufficient to invoke the jurisdiction of this Court or to require further argument.

Appellees respectfully urge this Court to dismiss this appeal or, in the alternative, to affirm the decision of the Minnesota Supreme Court without further argument.

Dated: December 14, 1981

Respectfully submitted,

WARREN SPANNAUS
Attorney General
State of Minnesota

Counsel of Record: KENT G. HARBISON
Assistant Attorney General
515 Transportation Building
Saint Paul, Minnesota 55155
Telephone: (612) 296-7537

Of Counsel: JOHN L. KIRWIN
Special Assistant Attorney General
515 Transportation Building
Saint Paul, Minnesota 55155
Telephone: (612) 296-6628

Of Counsel: MICHAEL T. MILLIGAN
Cass County Attorney
Cass County Courthouse
Walker, Minnesota 56484
Telephone: (218) 547-3300

Attorneys for Appellees

APPENDIX A

Law Offices of
LEGAL SERVICES PROJECT
CASS LAKE, MINNESOTA 56633

AN EQUAL OPPORTUNITY EMPLOYER

LEECH LAKE INDIAN RESERVATION
BOX 187
PHONE (218) 335-2283

ATTORNEYS
DAVID J. RASMUSSEN
ACTING DIRECTOR
NEIL R. TANDEN
MICHAEL J. RUFFENACH

PARALEGALS
FRED W. TIBBETTS
MARY L. SCHMID
MARY S. SMITH

September 11, 1979

Bert Dold, Appeals Referee
Appeals Office
Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Re: Melody Wittner Appeal Hearing

Dear Mr. Dold:

I feel as if your decision has not reached the pertinent question of the appeal. The County agency informed my client that no documentation would be acceptable unless it included the name of the absent parent. My client was not requested to provide further documentation of her good cause claim. She was simply informed that no name meant no acceptable claim. I was specifically told by the agency that medical records and/or police records would not be sufficient unless they named the absent father. The agency's reasoning is that without the name they cannot verify any documentation. From my client's point of view this implies that medical personnel or police officers would actually have to witness any physical abuse. If they did not witness the actual abuse, the agency would still only have my client's word that the documentation refers to the absent parent, and no means of "verification". This also implies that the only other way the agency would have to "verify" the claim would be to get an outright confession from the absent parent which is totally ridiculous.

Prior to the hearing, the Income Maintenance Unit and myself had agreed that the major point of the hearing was to determine whether naming the absent parent is essential to establishing good cause for non-cooperation. I don't feel as if your decision has provided an adequate answer for my client or the agency.

I am also sending you photocopied pages from the Federal Register pertaining to 45 CFR 232.12 as amended. Also enclosed is a photo-copy of the notice sent to my client indicating that sworn statements are an acceptable type of evidence. It appears as if the CFR cite stated in your decision is not the most current law on this matter. Although we feel that this was merely an oversight, you may wish to review your decision on the basis of the more current cite to eliminate any doubt as to the validity of your decision.

We are requesting that you clarify your decision in regard to two major points. First of all, we would like to know if naming the absent parent is essential to establishing a good cause claim. Secondly, we would like you to consider the revised CFR cite. As I pointed out at the hearing, my client is not opposed to providing additional statements, such as the ones already submitted, upon request of the local agency. However, we were informed that all such statements would be inadequate without the absent father's name.

I have requested that Cass County Department of Social Services delay any action based on your decision until the decision has been clarified.

Thank you.

Sincerely,

Mary L. Schmid
Paralegal

MLS:rlf

Enc.

cc: Linda Nye, F.W.I.
Melody Wittner

APPENDIX B

DEC 07 REC'D

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
REGION V
300 SOUTH WACKER DRIVE
CHICAGO, ILLINOIS 60606

SOCIAL SECURITY ADMINISTRATION

December 5, 1979

Our Reference: SD5A

Ms. Mary L. Schmid
Law Offices of Legal Services Project
Leech Lake Indiana Reservation
Cass Lake, Minnesota 56633

Dear Ms. Schmid:

We are responding to your letter of November 13, 1979, soliciting our opinion of Florence Aitchison's (HEW-Region II) interpretation of Federal Law and Regulation affecting a local agency's right to appeal a State hearing decision.

Ms. Aitchison's interpretation is substantially supported by HEW General Counsel interpretation as represented in the enclosed letter from Washington to the Ohio Department of Public Welfare (page 2, paragraph 1). Additionally, proposed recodification on fair hearings regulations clearly stipulates (p.p. 15 and 16) that "the local agency may not appeal a decision of the hearing authority." Intent would thus seem abundantly clear. A final authority within a single State agency is necessary to avert disorder, divergent practice, and a house divided.

The foregoing does not preclude the possibility of an erroneous judgement by a State referee; nor does it affect the recipient's right as an individual to extend an appeal to the courts.

The most significant aspect is the courts' option to accept an appeal from a local agency, there is nothing currently in effect that would inhibit their acting on such an appeal. The intent is to constrain local agencies from generating such appeals. It is apparent that this is done more informally than through clear mandates.

We hope the foregoing will assist you in obtaining a dismissal of the appeal as inappropriate to court jurisdiction. We would be interested in learning the outcome.

Sincerely,

Paul E. Webb

Paul E. Webb
Regional Commissioner

Enclosures (2)

No. 81-5709

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

MELODY WITTNER,

Appellant,

vs.

CASS COUNTY WELFARE DEPARTMENT
and
COMMISSIONER OF PUBLIC WELFARE,

Appellees.

AFFIDAVIT OF FILING

KENT G. HARBISON, being duly sworn, says:

1. I am a member of the bar of this court and counsel for appellees in the above-entitled matter.

2. On December 14, 1981, I filed an Appearance Form and ten copies of Appellee's Motion to Dismiss or Affirm by depositing the same in the United States mail, first-class postage prepaid and properly addressed to the Clerk of this Court.

3. To my knowledge, the filing took place this date, within the time permitted for filing the described documents.

KENT G. HARBISON
Assistant Attorney General
515 Transportation Building
Saint Paul, Minnesota 55155
Telephone: (612) 296-7537

Attorney for Appellees

Subscribed and sworn to before me
this 14th day of December, 1981.

Notary Public

M. FRANCES WINKEL
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Oct. 31, 1986